

document as a certified copy of the notes of the accused's public examination and the District Judge admitted this document on the strength of this identification. The question seems to be, then, analysing section 124, are the notes of a public examination a document "made or used in the course of any bankruptcy proceedings or other proceedings had under this Ordinance"? When one regards the very comprehensive definition of the term "document" in section 3 of the Evidence Ordinance it is hard to resist the conclusion these notes of the public examination constitute a document. Again it cannot be denied, I feel, that they were made in the course of proceedings under the Ordinance. For these reasons I think this objection also cannot succeed and that the notes were properly proved.

Finally it was contended on behalf of the appellant that this evidence was vitiated by the omission of the District Judge to observe the provisions of section 133 of the Evidence Ordinance. Mr. Seth for the appellant admitted that there was authority against him in this contention in *Rex v. G. A. Phillips*⁽¹⁾. Two criticisms were advanced on this judgment of Whitley J. — firstly that it wrongly expressed the view section 124 of the Bankruptcy Ordinance made a certified copy of such notes receivable in evidence in all legal proceedings whatever, a point I have already dealt with; and secondly that English cases did not constitute authority on the point at issue inasmuch as English law has no equivalent of section 133 of our Evidence Ordinance. Whitley J. expressed the opinion, however, that it was not necessary to decide the question upon the wording of section 132 [see now (Cap. 13) section 133] by itself inasmuch as that section deals with incriminating answers by an ordinary witness whereas the case before him dealt with answers by a bankrupt in the course of his public examination, a proceeding covered by section 17 of the Ordinance. With this opinion I respectfully agree. I do not think it can be correctly said the general provisions of law contained in section 2 and in section 133 of the Evidence Ordinance must overrule the specific provisions for procedure to govern the public examination of a bankrupt laid down in section 17 of the Bankruptcy Ordinance. Moreover when one considers the wide power given to the Court to put questions to the bankrupt and the unqualified obligation of the bankrupt to answer them under this section it is reasonable to suppose that, had the legislature intended to preserve to a bankrupt in those proceedings the well established ordinary right of a witness not to incriminate himself, it would have expressly said so. It is apposite also to bear in mind in this connection that while the corresponding provisions of the English bankruptcy

legislature do not override any other statutory provisions they involve what is perhaps an even more drastic step, the overriding of the great maxim of English common law, "*nemo tenetur se ipsum accusare*", as far as public examinations of bankrupts are concerned. Once these views are established the relevance of English cases to the present one can no longer be denied, and I do not think I need say more beyond that. I concur with the view of Whitley J. in *Rex v. Phillips*⁽¹⁾ to the effect that section 17 of the Bankruptcy Ordinance overrides section 133 of the Evidence Ordinance as far as the public examination of a bankrupt is concerned. For these reasons this ground of appeal also must fail.

As to sentence, the Deputy Public Prosecutor stated he would have no objection to the sentences being made concurrent. Such an order will, I think, meet the requirements of justice. Accordingly the convictions are confirmed but the sentences will run concurrently instead of consecutively.

Appeal dismissed.

Solicitors for the appellant: *Laycock & Ong.*

CHIA WAN KIAT v. M. THEYNAPPA LTD.

[O. C. J. (Knight J.) April 18, 1955]

[Singapore — Originating Summons No. 41 of 1953]

Limitation Ordinance (Cap. 16), Arts. 110-112 — Limitation (Amendment) Ordinance, 1949 — Adverse possession.

A piece of land at Boon Teck Road used as a private burial ground belonged to four brothers as tenants-in-common. M. Theynappa Ltd. purchased the share of Chia Ann Siang, a co-owner in 1938 and had since been collecting rents and profits from all the squatters of the said land without accounting for same to the other three co-owners until 1952 when Government acquired the said land.

Chia Wan Kiat the personal representative of one of the co-owners (Chia Ann Liew decd.) claimed the deceased's share in the Government award. M. Theynappa Ltd. resisted this claim on the ground that the company had been in adverse possession of the whole land since 1938 (a period of about 15 years).

Held: (1) it could not be said that the purchase of the share and subsequently collecting and unlawfully retaining the whole amount accruing from the land, the respondent company could be deemed to have entered into possession of all of it; (2) in computing the 12 years' period of limitation prescribed by the Schedule to the Limitation Ordinance, the period commencing from February 15, 1942 and ending September 30, 1949 should be excluded by virtue of the Limitation (Amendment) Ordinance, 1949.

Case referred to:—

- (1) *Custodian of Enemy Property v. V. Thayer* (1953) M.L.J. 189.

ORIGINATING SUMMONS.

N. A. Mallal and Eric Choa for the applicant.
K. Gould for the respondents.

Cur. Adv. Vult.

Knight J. : — This matter comes before the Court following a reference made by the Collector of Land Revenue under Section 10(2) of the Land Acquisition Ordinance (Cap. 128), a dispute having arisen as to who is entitled to receive (and to give a valid discharge for) the amount of \$142,760 being part of an award of \$207,226 made by the Collector following the acquisition by the Government in 1952 of 38 acres odd of land comprised in Lot 314 Mukim XVII in the District of Toa Payoh.

Formerly this land consisted of two lots, one being referred to as Grant No. 73 and the other as Grant No. 102 and it is admitted that the former was purchased on 21st April 1864 by three brothers named Chia Ann Liew, Chia Ann Siang and Chia Ann Lim. Grant No. 102 (which adjoins Grant No. 73) was acquired in May 1864 by the same three gentlemen but a fourth brother, named Chia Ann Neo (who was also known as Chia Ann Kee), entered into this transaction and each brother acquired a quarter share in this property. The object of the purchase of this land by the Chia family was to provide a family burial ground and between the years 1864—1938 no fewer than 32 members of the family, including three of the four purchasers, were interred there. The surviving brother, who was the last to die (in September 1892) was apparently buried elsewhere, but there are graves of many of his children on the land which was licensed as a burial ground as long as 1857 and relicensed under the Municipal Ordinance in 1896.

By his will dated 21st May 1884 (by which date his three brothers had died) Chia Ann Siang endeavoured to make provision that the land in question should be kept in perpetuity as a burial ground for the Chia family thus purporting to have the sole power of its disposal. In August, 1914, however this trust was held by the Supreme Court to be void and it was ordered that the land should be sold in terms of other provisions in the will relating to the testator's immovable property. For some reason that is not known, this order was not complied with and from the date of Chia Ann Siang's death in 1892 certain rents and profits derived from the presence on the land of squatters (who invaded the land at dates unknown) were received by one Chia Keng Beng who was one of Chia Ann Siang's sons and his executor. To what purpose Chia Keng Beng put the moneys he received from this source is also unknown but there is no indication that any of it went to the descendants of his three deceased uncles or that any demand was made by them in regard to it.

In March 1931, by which date Chia Keng Beng had died, a Trust Company known as the Estate & Trust Agencies (1927) Ltd. was authorised to apply for Letters of Administration *de bonis non* of the estate of Chia Ann Siang and the Company commenced to collect the rents and profits from the land which they put to the credit of the estates of the four registered owners of the land i.e. the estates of Ann Siang, Ann Kee, Ann Lim and Ann Liew. No claim has ever been made on the Trust Company for payment out of these sums.

In May 1938 the Trust Company, with permission of the Court sold the two shares of the land belonging to the estate of Chia Ann Siang, one direct to M. Theynappa Ltd. and the other to one Tan Chwee Boon who subsequently sold his share to M. Theynappa Ltd. This company, to which I shall refer hereafter as "the Respondent Company" thus acquired both shares of the estate of Ann Siang in the year 1938 and from that date has collected rents and profits from all the squatters on the land not for the accounts of the four registered owners but for its own account. I might add that in recent years the number of squatters has increased considerably as have the rents and profits.

This then was the position in 1952 when the land was acquired by the Government for the sum of \$207,226, but once this news became public, as was only to be expected, there were several important happenings. The first of these was that the descendants of Ann Siang's three brothers (hereinafter referred to as the claimants) suddenly made claims to be entitled to their deceased grand parents' shares as tenants in common, formerly with Ann Siang and now with the Respondent Company; and secondly a claim was made by the Respondent Company to the shares of the estates of all the deceased brothers, in addition to the share purchased from Ann Siang's estate, on the grounds that the Company had paid no rent for these shares of the land for 12 years during which period they had been in continuous uninterrupted possession.

The above facts are contained in various affidavits which have been sworn by the parties to these proceedings but in addition to this several witnesses have been called in regard to whose evidence I have reached the following conclusions :—

(1) That owing to the fact that until recent years the rents and profits accruing from the land were negligible the descendants of Ann Siang's brothers, though some of them were aware that they might have interests in the land, took no steps to ascertain their true position or to assert their title and claim their shares of the sums due to them.

(2) That although various members of the Chia family have at times visited the graves of their ancestors during the All Souls Festival there is no evidence that these visits constituted acts of ownership; and

(3) That Mr. Theynappa—the managing director of the Respondent Company, is a shrewd business man well versed in the law of adverse possession. Although he denied it, the probabilities are that he heard about this land from one of his shareholders, Seet Tiow Kiat, (a grandson of Ann Siang) and purchased a 2/7th share of it through the Respondent Company with a view to the subsequent acquisition of all of it by virtue of adverse possession.

It must, however, be remembered that the Respondent Company bought only 2/7th of the whole land and that in 1951 i.e. after the 12 years upon which they rely to prove adverse possession had elapsed, they mortgaged only those two shares and made no claim at that time to the whole of the land as they could have done e.g. by filing a statutory declaration. Again, at all material times the assessment notices have been issued in the name of *Chop Keng Beng*. There is thus little merit in the case for the Respondent Company and it remains for consideration whether they can succeed in law.

The first point which arises in this connection is the date on which some person first took actual possession of the land from the original four tenants in common i.e. the date from which the 12 year period actually started to run. As I see it there are four dates which might be considered relevant; the first of which is 1892 i.e. the date of the death of Ann Siang. Prior to that date there is no evidence of the dis-possession of the estates of his three brothers. From that date, however, there is evidence that Keng Beng collected certain rents and profits and it might be inferred from this fact that adverse possession commenced to run from then. On the other hand, for all we know, Keng Beng may have shared such rents and profits with his uncle's descendants or there may have been no rents or profits. Further, until 1914 at least the entire Chia family expected that the land would be held in trust as a family burial ground and it is difficult to see how Keng Beng's management of the land with this ultimate object in view could be deemed to be adverse.

The next relevant date is 1914 when this Court declared that the land in question could not be held in trust as a burial ground but must be deemed to be part of the testator's immovable property and sold in accordance with other provisions made in his will. From the date of that judgment can it be said that Keng Beng's possession of the land as executor became adverse? I do not think that it can. I am told that the 1914 proceedings were restricted only to the family of Ann Siang and there is no evidence that descendants of his brothers ever had notice of the purported disposition of their land in his will. No question of

res judicata can arise as no issue as to the ownership of the land was before the learned Judge in the 1914 proceedings.

Next there is the year 1931 when the land was taken over by the Trust Company; but this presents no difficulty firstly because that Company at no time claimed adverse possession (paragraph 8 of the affidavit of Mr. Heng Hung Pang) and secondly because its Secretary was careful to allocate certain of the rents and profits to the estates of the three deceased brothers. There thus remains the year 1938 from which date the Respondent Company claims adverse possession. Now what in fact did that Company do? Admittedly it collected rents in respect of the whole land and itself paid no rent for the 5/7ths of the land which it had not purchased. During part of the Occupation, moreover, it is said that the Company's managing director actually lived in a house built on the land. No fencing was undertaken by the Respondent Company and no claim was ever made by it to ownership of all the land until the date of acquisition by the Government. Again, why was not the name "*Chop Keng Beng*" struck out of the assessment notices and why was only a 2/7th share mortgaged in 1951?

Admittedly there may have been a discontinuance from as long ago as the deaths of Ann Siang's brothers but mere abandonment does not create adverse possession in another until that other actually enters into possession. In my opinion it cannot be said that in the purchase of 2/7ths of the land and subsequently collecting, and unlawfully retaining, the whole amounts accruing from all the land, the Respondent Company can be deemed to have entered into possession of all of it. No doubt they exercised the rights of an owner but this, *per se*, does not suffice, in my opinion to constitute possession. This finding must dispose of the case; but as the issues are not easy and my decision may well be reconsidered elsewhere, I would add that if I had concluded that adverse possession started to run from July 1938 i.e. (and this is important) the date from which the Respondent Company claims such possession, I should still have held that in view of the provisions of the Limitation (Amendment) Ordinance No. 33 of 1949, the 12 year period had not elapsed. The case of the *Custodian of Enemy Property v. V. Thayer*⁽¹⁾ is clearly distinguishable from this one. In the *Custodian's* case the respondent had acquired a title by prescription four years before the Amending Ordinance was passed and that Ordinance was not expressed to operate retrospectively. In this case, however, the Ordinance came into force before the 12 year limitation period had elapsed, which is an entirely different matter.

I therefore direct that the money in Court i.e. \$142,760 be paid out to those entitled to receive it from the estates of the three brothers of the deceased Ann Siang. The Registrar will conduct an inquiry to ascertain the names of the persons concerned and the amounts to which they are entitled. The Respondent Company will pay the costs of these proceedings and the claimants will no doubt be advised as to their rights regarding their shares of the rents and profits which were collected during the period July 1938 to December 1952.

Claim allowed.

Solicitors: *Oehlers & Choa; Rodyk & Davidson.*

LIM JOO CHIANG v. LIM SIEW CHOO & ANOR.

[P. C. (Lord Morton of Henryton, Lord Radcliffe,
Lord Keith of Avonholm, Lord Somervell and
Mr. L. M. D. de Silva) July 12, 1955]

[Privy Council Appeal No. 19 of 1954]

Negligence — Loss of Expectation of life — Damages — Measure of — Civil Law Ordinance (Cap. 42), ss. 7 and 8 — Administration expenses disallowed.

[This was an appeal against the decision of the Singapore Court of Appeal [(1953) M.L.J. 231], where the said Court affirmed the award of the learned trial Judge under s. 7 of the Civil Law Ordinance, \$2,000 (including funeral expenses and costs of letters of administration) and under s. 8 of the same ordinance \$15,000. The Court of Appeal held that in cases of this kind it was convenient if the basis of calculating awards under s. 8 were fully set out and the award to each dependant calculated separately. In the total sum of damages awarded a sum of \$350 was included for costs of letters of administration.]

The Judicial Committee of the Privy Council in dismissing the appeal and affirming the order for damages varied the decision of the Court of Appeal by disallowing the \$350 for costs for letters of administration.

[Editorial Note: See Note under the heading "Administration Expenses in Accident Cases" ante p. xxviii].

Cases referred to:—

- (1) *Davies v. Powell Duffryn Associated Collieries Ltd.* (1942) A.C. 601.
- (2) *Feay v. Barnwell* (1938) 1 All E.R. 31.

PRIVY COUNCIL APPEAL.

Frank Whitworth for the appellant.

Ian Baillieu for the respondents.

Lord Somervell of Harrow : — This is an appeal by the defendant on quantum of damages. The plaintiffs are the widow and administratrix and the administrator of Chia Boon Pah, hereinafter called the deceased. He earned his living as a trishaw rider. He had a wife and four children, three of whom were dependent. He was killed in a collision with a motor

car driven by the defendant, who, by his defence, admitted liability.

The respondents claimed under sections 7 and 8 of the Civil Law Ordinance of the Straits Settlements. Section 7 deals with the survival of causes of action for or against a deceased on lines similar to those to be found in the Law Reform (Miscellaneous Provisions) Act 1934. Section 8 contains provisions similar to those to be found in the English Fatal Accidents Acts.

The first and main submission for the appellant was that the damages were in any event excessive and should be reduced. Apart from a small and subsidiary point under section 7 the submission was directed to the sum awarded under section 8.

The basis of the claim under section 8 is the amount of the pecuniary benefit which the plaintiffs might reasonably have expected to enjoy. In the present case the widow sued on behalf of herself and the three dependent children. She received, she said, from the deceased \$8 per day to run the home.

The appellant submitted that there fell to be deducted from this a sum of about \$100 per month, the profits of a coffee stall which had been run by the wife. It was suggested that these profits were handed over by the wife to her husband and were therefore part of the \$8 handed to her. As she could continue to run the coffee stall as her own the \$8 it was said should be reduced to about \$5. There is no suggestion in the notes of evidence that this sum from the coffee stall was handed over to the husband and handed back as part of the \$8 per day. The Court of Appeal expressly rejected this view. It is clear from the notes of argument that the learned Judge also rejected it. The appellant is therefore asking the Board to interfere with concurrent findings of fact which are plainly in accordance with the notes of the evidence. That point fails.

It is then submitted that if the sum is calculated in accordance with recognised principles a much lower figure would be obtained. In particular it is submitted that having regard to the man's age the Court of Appeal in a recalculation of the sum, made to see whether there was any ground for interfering with the trial Judge, took too high a multiplier.

These cases raise questions of opinion on which minds whether of Judge or jury applying right principles may differ substantially. No appellate court will interfere only because the figure awarded by a trial Judge is greater or less than that which the appellate court would itself have awarded. The burden on an appellant who invites this Board to interfere with a figure which has commended itself to two courts below